SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No.

FEDERAL LAND BANK OF COLUMBIA, S. C.,
PETITIONER,

vs.

MRS. WILL GAINES

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

INDEX

	Original	Print
Proceedings in supreme court of North Carolina	1	1
Caption	1	1
Record from superior court of Polk County	1	1
Agreement and affidavit in controversy without action	1	1
Agreed statement of facts	2	2
Exhibit A—Application of Mrs. Will Gaines for loan and statement of Mrs. Will Gaines, dated August 16th, 1930 (omitted in printing)	5	
Exhibit B—Note executed and delivered by Mrs. Will Gaines to the Federal Land Bank of Columbia, dated November 5th, 1930 (omitted in printing)	10	
Exhibit C—Mortgage executed and delivered by Mrs. Will Gaines to the Federal Land Bank of Columbia, dated November 5th, 1930	12	4
Exhibit D—Paid check of Federal Land Bank of Columbia (omitted in printing)	21	
Exhibit E—Closed loan statement	22	13

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 22, 1933

	Original	Print
Exhibit F—Letter of P. S. Lewis, secretary-treasurer of Columbus National Farm Loan Association, to M. R. McCown, dated October 19th, 1931.	26	16
Judgment	28	18
Appeal entries	28	19
Assignments of error	29	19
Agreement as to case	29	19
Agreement as to Exhibits "A" and "B"	30	20
Opinion, Connor, J.	34	23
Judgment	39	27
Petition for stay of execution	40	28
Order staying execution	42	29
Bond on stay (omitted in printing)	44	
Clerk's certificate (omitted in printing)	47	
Clerk's certificate as to judgment, etc.	48	30
Stipulation re omission of exhibits	49	31
Order allowing certiorari		33

[fol. 1]

IN SUPREME COURT OF NORTH CAROLINA, EIGHTEENTH DISTRICT, FALL TERM, 1932

No. 552

FEDERAL LAND BANK OF COLUMBIA, S. C., Plaintiff,

v.

Mrs. WILL GAINES, Defendant

Before Schenk, Judge, April Term, 1932, Polk County Superior Court. Plaintiff Appealed

This is a controversy without action, submitted to the Superior Court for Polk County on the following agreed case:

IN SUPERIOR COURT OF POLK COUNTY

THE FEDERAL LAND BANK OF COLUMBIA

v.

Mrs. WILL GAINES

AGREEMENT AND AFFIDAVIT IN CONTROVERSY WITHOUT ACTION

The Federal Land Bank of Columbia, South Carolina, by its undersigned attorney, J. S. Massenburg, and Mrs. Will Gaines, by her undersigned attorney, M. R. McCown, say and agree:

[fol. 2] 1. That the aforesaid Federal Land Bank of Columbia and Mrs. Will Gaines are parties to a question in difference which might be the subject of a civil action, and said parties desire, without action, to present and submit the said controversy to the Superior Court of Polk County, which Court would have jurisdiction if an action had been brought.

2. That the statement of facts hereto attached constitutes all of the facts and the agreed case upon which the controversy may be decided.

3. That the controversy is real and the proceedings in good faith to determine the rights of the parties.

J. S. Massenburg, Attorney for Federal Land Bank of Columbia, S. C. M. R. McCown, Attorney for Mrs. Will Gaines.

NORTH CAROLINA,
Polk County:

Personally appeared before me Mrs. Will Gaines, who being duly sworn, says that she has read the foregoing statement and the agreed statement of facts, and the said case and proceedings are brought in good faith to determine the rights of the parties and the said controversy is real.

Mrs. Will Gaines.

Sworn to and subscribed before me this 15th day of Mareh, 1932. My commission expires May 18, 1933. J. B. Hester, Notary Public, North Carolina. (Seal.)

IN SUPERIOR COURT OF POLK COUNTY

AGREED STATEMENT OF FACTS IN CONTROVERSY BETWEEN THE FEDERAL LAND BANK OF COLUMBIA AND MRS. WILL GAINES

1. The Federal Land Bank of Columbia is a Federal Land Bank chartered, organized and doing business under the provisions of an Act of the Congress of the United States known as The Federal Farm Loan Act.

[fol. 3] 2. The Columbus National Farm Loan Association is a National Farm Loan Association chartered, organized and doing business under the terms and provisions of The Federal Farm Loan Act.

3. On August 16, 1930, Mrs. Will Gaines made application through the Columbus National Farm Loan Association to The Federal Land Bank of Columbia for a loan of One Thousand ($1,000) Dollars, offering as security for the loan a mortgage on twenty-seven (27) acres of land in Polk County, North Carolina. The application was approved.

by the Columbus National Farm Loan Association on August 20, 1930, and on that date Mrs. Gaines was admitted to membership in said Association. The application was approved by The Federal Land Bank of Columbia on October 1, 1930. A copy of the application for the loan is attached to this statement of facts, made a part hereof, marked Exhibit A.

4. On October 2, 1930, Mrs. Gaines was advised by The Federal Land Bank of Columbia of the approval of her application for a loan, and was requested to select from a list of approved attorneys furnished her by the bank, attorneys to prepare an abstract of title for consideration of the bank. Mrs. Gaines employed Messrs. Jones and Massenburg to prepare the abstract of title, and they furnished it to the bank on October 25, 1930.

5. On November 5, 1930, Mrs. Gaines executed and delivered to The Federal Land Bank of Columbia a note and mortgage for the loan in the amount of $1,000, copies of which are attached to this statement of facts, marked, respectively, Exhibits B and C, and made part hereof.

6. On November 14, 1930, The Federal Land Bank of Columbia sent to Messrs. Jones and Massenburg its check on the Commercial National Bank of Charlotte, North Carolina, dated November 12, 1930, for $945.00, payable jointly to Percy Lewis, secretary-treasurer of the Columbus National Farm Loan Association, and Mrs. Will Gaines, with instructions to the attorneys and to the secretary-[fols. 4-11] treasurer of the Columbus National Farm Loan Association for closing the loan to Mrs. Gaines. A copy of the check, with endorsements thereon, is attached to this statement, made part hereof, marked Exhibit D. With the check was sent a closed loan statement, to be filled in by the secretary-treasurer of the Columbus National Farm Loan Association and signed by him and Mrs. Gaines. A copy of the statement as sent with the check is attached to this statement, made part hereof, and marked Exhibit E. The check represented the proceeds of the loan after deducting Fifty ($50) Dollars for Mrs. Gaines' stock in the Columbus National Farm Loan Association, Three ($3.50) Dollars and Fifty Cents for title determination fee, and One ($1.00) Dollar for title insurance premium.

7. The check referred to in the preceding paragraph was delivered by the attorneys to Percy Lewis, secretary-treasurer of Columbus National Farm Loan Association, on November 18, 1930, and was handled by him as indicated in a letter addressed by Mr. Lewis under date of October 19, 1931, to Mr. M. R. McCown, a copy of which is attached to this statement, marked Exhibit F, and made part hereof. At the time of this transaction the Polk County Bank and Trust Company was the only bank in Columbus, North Carolina. The Polk County Bank and Trust Company was open for business through Friday, November 21, 1930, but failed to open for business on Saturday, November 22, 1930.

8. No payments on the loan have been made by Mrs. Gaines to The Federal Land Bank of Columbia, although The Federal Land Bank of Columbia has demanded from Mrs. Gaines payment of the interest, which under the terms of the note executed by her was due December 1, 1930, and of the interest and the first installment of principal, which under the terms of the note were due December 1, 1931.

This 15th day of March, 1932.

M. R. McCown, Attorney for Mrs. Will Gaines. J. S. Massenburg, Attorneys for The Federal Land Bank of Columbia.

[fol. 12] EXHIBIT "C" TO AGREED STATEMENT OF FACTS:

Form L-4—North Carolina—Revised—2-20-31. Springfield Plan.
dd-10-29-30.
eb-dd.

Original

The Federal Land Bank of Columbia

Amortization First Mortgage

Annual Payment

STATE OF NORTH CAROLINA,
County of Polk:

This Indenture, made this 5 day of November, 1930, by and between Mrs. Addie (Mrs. Will M.) Gaines, widow, of

Polk County, State of North Carolina, hereinafter called parties of the first part, whether one or more, and The Federal Land Bank of Columbia, party of the second part, a corporation organized, created and existing under and by virtue of an Act of Congress of the United States of America, entitled "The Federal Farm Loan Act," Witnesseth, That

Whereas, the said parties of the first part are indebted to The Federal Land Bank of Columbia, party of the second part, as evidenced by a certain promissory note of even date herewith, for the principal sum of One Thousand and No/100 ($1,000.00) Dollars, payable to the order of The Federal Land Bank of Columbia, bearing interest at 6 per centum per annum from date to and including the first day of December, 1930, which shall be known as the preliminary interest payment, and thereafter interest from the date last mentioned on the said principal sum of said note, plus the first installment of principal as shown by the amortization table printed on the back of said note, is to be paid on the first day of December, 1931, and the remaining Nine (9) installments successively, including principal and interest, on the same day of each year thereafter until all have matured on an amortization plan in the order and in the several respective amounts as the same are set forth in and fully in accordance with the amortization table [fol. 13] printed on the back of said note, which is hereby accepted and made a part of this mortgage, and provided that, in the event of default in the payment of any installment or installments in accordance with the terms thereof, the same shall bear simple interest from date of such default until paid at the rate of six (6) per centum per annum, and providing further that, after five years from date and on any regular installment date, an additional payment on the principal may be made in such an amount that shall be equal to one or more of the annual payments on the principal as ascertained from the amortization tables prescribed by the Federal Farm Loan Board or the entire principal sum may be paid, all of which and such other terms as therein contained will more fully appear by reference to said note.

Now, Know All Men, That the said parties of the first part of the County and State aforesaid, in consideration of the debt as evidenced by said note, and for the better

securing of the payment thereof, to the said The Federal Land Bank of Columbia, according to the terms of said note, and the performance of the conditions and covenants herein contained, and also in consideration of the sum of One Dollar to the said parties of the first part in hand well and truly paid by the said The Federal Land Bank of Columbia, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell and release unto the said The Federal Land Bank of Columbia, its successors or assigns.

All that certain piece, parcel or tract of land situate, lying and being in the Township of Tryon, County of Polk and State of North Carolina, adjoining the lands of Thomas Alewine, T. C. Mills, R. B. Stredwick, Thomas Howard, Wilson Howard and R. A. Leonard, and bounded and more particularly described as follows, viz:

Beginning at a pine on Alewine's road in line of Thomas Alewine and runs thence South 56 deg. 30 min. West with lines of Thomas Alewine and T. C. Mills 14 chains to a Black Gum; thence with said T. C. Mills and R. B. Stredwick's line South 21 deg. 30 min. East 14 chains to a White [fol. 14] Oak, Stredwick's corner; thence with said Stredwick's line South 47 deg. 30 min. East 3.18 chains to a stone, R. E. Stredwick's and Thomas Howard's corner; thence with line of said Thomas Howard North 67 East 18.82 chains to pine on edge of Alewine road, Thomas and Wilson Howard's corner; thence with the meanders of said road North 57 deg. 30 min. West 80 feet; thence North 60 deg. 15 min. West 128 feet; thence North 57 deg. 30 min. West 114 feet; thence North 49 deg. 51 min. West 211 feet; thence North 23 deg. 30 min. West 80 feet; thence North 31 deg. 15' West 8½ chains to the point of beginning, containing 28 7/100 acres, more or less, and being the major part of the land conveyed to W. M. Gaines by deed from Anna Reasoner and husband, L. P. Reasoner, dated December 5, 1908, and of record in Book 26, at page 528, of the Records of Deeds for Polk County, North Carolina, and being bounded on the north by the lands of T. C. Mills; on the East by the lands of R. A. Leonard and V. C. Scism; on the South by lands of Thomas Howard, and on the West by lands of T. C. Mills and R. B. Stredwick, as will more fully

appear by reference to a plat thereof made by T. C. Mills in 1906, and attached to the abstract now on file with The Federal Land Bank of Columbia.

Together with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in any wise incident or appertaining.

To Have and to Hold, the same with all the rights, privileges, easements and appurtenances thereto belonging unto the said The Federal Land Bank of Columbia, its successors or assigns forever. And the said parties of the first part for themselves, their heirs, executors and administrators, covenant to and with the party of the second part, its successors or assigns, that they are seized of said premises in fee and have a present right to convey the same, that the same is free from all encumbrances and that they will warrant and defend the title thereto against all lawful claims. [fol. 15] Provided always, nevertheless, and it is the true intent and meaning of the parties to these presents, that if the said parties of the first part shall well and truly pay, or cause to be paid, unto the said The Federal Land Bank of Columbia, its successors or assigns, the said debt or sum of money with interest thereon as aforesaid, and shall perform all conditions and covenants according to the true intent and meaning of said note and this mortgage, then this mortgage shall cease, determine and be utterly null and void; otherwise it shall remain in full force and effect.

1. And It Is Covenanted, By and between the said parties that the said parties of the first part, their heirs, executors or administrators, will insure and keep insured, to the satisfaction of The Federal Land Bank of Columbia, all the buildings and improvements now on said premises, the value of which was a factor in determining the amount of the loan secured hereby against loss or damage by fire or wind storm, in such sum or sums as may be required by The Federal Land Bank of Columbia, and in such company or companies as may be approved by The Federal Land Bank of Columbia, its successors or assigns, the loss, if any, to be payable to The Federal Land Bank of Columbia as its interest may appear at the time of the loss, and will deliver said policy or policies of insurance to The Federal Land Bank of Columbia, and will promptly pay when due all premiums for such insurance. In case any insured build-

ings or improvements on said premises are destroyed or damaged by fire or wind storm the sum or sums collected from said insurance may at the option of said parties of the first part be applied either to the payment of the note secured by this mortgage, or, subject to regulations of the Federal Farm Loan Board and under the direction of The Federal Land Bank of Columbia, to the reconstruction of the buildings or improvements so destroyed or damaged.

2. And It Is Further Covenanted, That the said parties of the first part shall pay as the same become due, all taxes, liens, judgments, or assessments which may be lawfully assessed against the property hereby mortgaged.

[fol. 16] 3. And It Is Further Covenanted, That if the said parties of the first part, their heirs, executors, administrators or assigns, shall fail to procure and maintain said insurance, or if after procuring the same shall fail to pay the premium charged therefor, or shall fail to pay said taxes, liens, judgments, or assessments as herein agreed, then The Federal Land Bank of Columbia, its successors or assigns, may effect said insurance and pay the premiums thereon, as well as any unpaid premium for an insurance policy procured and deposited by the party of the first part with the party of the second part under the provisions of section one hereof, and may also pay said taxes, liens, judgments, or assessments; and the money so advanced for the payment of such insurance premiums, taxes, liens, judgments, or assessments shall be added to the mortgage debt and become a part thereof and the repayment of the same with simple interest at the rate of six (6) per centum per annum from the date of such payment and until paid shall be secured by this mortgage, and The Federal Land Bank of Columbia, its successors or assigns, shall be subrogated to all rights of the party or parties to whom payments have been made; provided that the amount so advanced by the party of the second part to pay any such insurance premium, tax, lien, judgment or assessment shall, at the option of the party of the second part, be repaid by the party of the first part forthwith upon demand or thereafter at the time the next installment is due to be paid; and a failure to comply with the provisions of this proviso shall constitute such an immediate default in the insurance agreement

under the provisions of section six hereof as will entitle the party of the second part to all the remedies therein or elsewhere herein provided.

4. And It Is Further Covenanted, That the said parties of the first part, their agents, tenants, heirs, executors, administrators or assigns, shall keep all buildings and improvements now on said premises, or hereafter erected thereon, in as good order and condition as they now are, and will not commit or permit waste, including the removal [fol. 17] of any timber from said premises, or use the timber on said premises for turpentine purposes, or any other purpose, except for firewood and ordinary plantation purposes, without the consent in writing of The Federal Land Bank of Columbia or injure the premises to such an extent as will impair the value of the security of this loan.

5. And It Is Furtner Covenanted, That the said parties of the first part shall use the entire amount derived from the proceeds of the note and this mortgage either: for (1), the purpose or purposes specified by the party of the second part at the time the loan is approved; or (2), with the permission of The Federal Land Bank of Columbia for any purpose specified in section 12, subsection 4 of the Federal Farm Loan Act and amendments thereto; or (3), for the payment of the stock subscription in the National Farm Loan Association, subscribed for in the application for the loan secured hereby.

6. It is Further Covenanted, That if the said parties of the first part, their heirs, executors or assigns, shall as aforesaid pay all installments as specified in the note and in this mortgage according to the terms and conditions thereof, then this mortgage shall be null and void; but if the said parties of the first part shall fail to pay the preliminary interest installment, or any of the said installments as they become due and payable, or to perform all of the conditions and covenants as specified in the note and in this mortgage; or if default be made in the insurance agreement or in the payment of said taxes, liens, judgments, or assessments as herein provided; or if the buildings and improvements are not kept in as good repair as they now are; or if injury or waste is done or permitted which impairs the value of the security of this mortgage;

or if the proceeds derived from the said note and this mortgage are used for any purpose or purposes other than herein specified, then at the option of the said The Federal Land Bank of Columbia, or its successors or assigns, the whole principal sum of said note remaining unpaid at that time, together with all accrued interest and all other sums [fol. 18] including all advances made for taxes, liens, judgments, or assessments, premiums of insurance and charges of any kind, shall at once become due and payable without notice, and this mortgage may forthwith be foreclosed for the whole amount of said sums, interest and costs.

7. And It is Further Covenanted, That as a further security for the payment of the note and all installments thereof, and for the performance of all the terms of said note and all the conditions and covenants of this mortgage that the said parties of the first part hereby assign, set over and transfer to The Federal Land Bank of Columbia, its successors or assigns, all of the rents and income of said mortgaged premises for each and every year that any installment or installments of the said note may be unpaid, together with all rights and remedies for enforcing collection of the same; and that, upon filing suit, or at any time thereafter, of foreclosure. The Federal Land Bank of Columbia, its successors or assigns, shall be entitled to have a receiver appointed to take charge of the said mortgaged premises, together with all the rents, profits, crops and proceeds arising therefrom during such litigation and to hold the same subject to the order and direction of the Court.

8. And It Is Further Covenanted, That the said parties of the first part, their heirs, executors, administrators or assigns, shall hold and enjoy the said premises until default in payment of the installments as provided in said note or a breach of any of the conditions and covenants of this mortgage shall be made.

9. It Is Especially Covenanted, as well as represented and declared as a condition hereof, by the said parties of the first part, that, when the loan secured hereby is closed, there will be no outstanding and unsatisfied encumbrance of any nature against the lands herein described prior to the lien hereof.

10. It Is Expressly Made a Covenant and condition hereof that in case of error in this mortgage or the note which it secures, a note and mortgage to correct the same, dated as of this date, will be promptly executed by the mortgagor.

[fol. 19] In Witness Whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

(Signed) Mrs. Addie (Mrs. Will M.) Gaines, Widow. (Seal.)

Witness: —— ——.

STATE OF NORTH CAROLINA,
Polk County:

I, Evelyn Lott, being duly authorized to take acknowledgments of deeds, etc., in North Carolina, do hereby certify that Mrs. Addie (Mrs. Will M.) Gaines, widow, personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal, this the 5th day of November, 1930.

Signature of Officer: (Signed) Evelyn Lott, Notary Public. My commission expires Nov. 5, 1931. (Seal.)

STATE OF NORTH CAROLINA,
—— County:

I, —— ——, being duly authorized to take acknowledgments of deeds, etc., in North Carolina, do hereby certify that —— —— and his wife, —— ——, personally appeared before me this day and acknowledged the due execution of the foregoing instrument; and the said wife being by me privately examined, separate and apart from her said husband, touching her voluntary execution of the same, doth state that she signed the same freely and voluntarily, without fear or compulsion of her said husband or any other person, and that she doth still voluntarily assent thereto.

Witness my hand and official seal, this — day of ——, 193-.

Signature of Officer: —— ——. My commission expires —— —, ——.

[fol. 20] STATE OF NORTH CARCLINA,
Polk County:

The foregoing certificate of Evelyn Lott, Notary Public of Polk Co., N. C., is adjudged to be correct. Let the instrument, with the certificate, be registered.

Witness my hand this 5th day of November, 1930.

(Signed) Jno. A. Arledge, Clerk of Superior Court.

STATE OF NORTH CAROLINA,
—— County:

The foregoing certificate has been duly proven, as appears from the foregoing seals and certificates, which are adjudged to be in due form and according to law. Let the same with said certificate be registered.

Witness my hand this — day of ——, 193-.

——, Clerk of Superior Court.

NOTE.—The following certificate is for the exclusive use of the attorney of the Federal Land Bank of Columbia, which will be executed when the mortgage is received by the Bank, and in no instance should it be signed by the attorney of the borrower.

I, the undersigned Assistant Counsel for The Federal Land Bank of Columbia, hereby certify that, according to the documents hereinafter mentioned and the disbursement records of said Bank, this mortgage covers the property which is described in the application for the loan secured thereby, The Federal Land Bank appraiser's report or reports thereon, and the abstract or abstracts, including any continuations, of title to said property; that said mortgage has been duly executed and recorded; and that it constitutes the first lien on said property.

This 26th day of October, 1931.

(Signed) Wm. Henry Thomas, Asst. Counsel.

[fol. 21] Loan No. N97-131. State of North Carolina, County of Polk. Amortization first mortgage. Mrs. Addie (Mrs. Will M.) Gaines, Widow, to The Federal Land Bank of Columbia. Received at 9 A. M. Nov. 5, 1930; Recorded Nov. 5, 1930, in Book 38, page 358. (Signed) W. C. Hayne, Register of Deeds. Clerk's Fee .25. Register's Fee 3.50. The Federal Land Bank of Columbia.

[fol. 22] EXHIBIT "E" TO AGREED STATEMENT OF FACTS

Treasury Department—Federal Farm Loan Bureau.
Form 1328—6-16-25.

The Federal Land Bank of Columbia

Closed Loan Statement

Index No.: N 97-131.
Name of Borrower: Mrs. Will Gaines.
Name of Association: Columbus.
Address of Secretary-Treasurer: Columbus, N. C.
Application Received: 9-2-30.
Date of Appraisal: 9-23-30.
Date of Approval: 10-1-30.
Abstract Received: 10-25-30.
Date of Mortgage: 11-5-30.
Date of Closing: 11-12-30.

Amount of Loan and Interest Rate

Original Loan: $1,000.00 at 6%.
Increased Loan—Amount Approved: $— at —%. Balance Due on Original Loan: $— at —%. Amount of Additional Loan: $— at —%.

Payments and Dates

Preliminary Interest: Due Dec. 1-30. Amount $—.
Amortization Installments: Due Dec. 1 and ——. —. Amount: 10 for $100.00 each on the principal, together with 6% interest.

1. Cost to Borrower

Bank:

For Title Insurance: $2.50 per $1,000.00, $1.50.
For Title Examination by Bank: $3.50.
For Fire Insurance Premium, covering two years: $—.
For Appraisal by Bank: $5.00.
Total Bank Charges, $10.00.

Abstract:

Prepared by Attorney: ——.
[fol. 23] Regular Charges: $35.00.

Extra Charges: $—.
Examined by Attorney: ——.
Regular Charges: $——.
Extra Charges: $——.
Prepared by Abstract Company: $——.
Total Abstract Charges: $35.00.

Association:

One (1) per cent of Amount Approved: (See Note 3.)
Collected when Application made: $——.
Collected when Loan closed: $——.
Special Fee to cover cost of Appraisal (See Note 3): $——.
Total Collected by Association: $——.
Amount Refunded to Borrower: $——.
Total Association Charges: $——.
Grand Total of all Expenses in Securing Loan: $——.

2. Disposition of Association Charges

Payment of Appraisal by Association: From the one (1) per cent of the loan: $——.
Payment of Appraisal by Association: From the Special Fee Collected: $——.
Payment of Salary of Secretary-Treasurer in this Loan: $——.
Balance in Association Treasury for General Association Expenses: $——.

3. Closing Loan by Bank—Deductions—Check Forwarded for Balance

Amount of Loan: $1,000.00.
Amount of Bank Charges Deducted: $5.00.
For Preliminary Interest (See Note 4): $——.
Amount of Stock Deducted (See Note 1): $50.00.
Original Loan Deducted When Closing Increased Loan: $55.00.
Total Deductions: $——.
Amount of Check Forwarded to Attorney for Closing Loan: $945.00.

[fol. 24] 4. Closing Loan by Association—Disbursements—Check for Balance to Borrower

Paid to —— for ——: $——.
Paid to —— for ——: $——.
Paid to —— for ——: $——.
Paid to —— for ——: $——.
Paid to —— for ——: $——.
Balance Paid to Borrower: $——.
Total Disbursements: $——.

(NOTE.—This must exactly equal check forwarded.)

5. Purposes of Loan in Addition to Purchase of Stock in Association

To Purchase Land: $——.
To Purchase Equipment: $——.
To Purchase Livestock: $——.
To Build: $——.
To Make Improvements: $——.
To Liquidate Indebtedness: $945.00.
Total Amount Approved for Specified Purposes Other Than Purchase of Stock in Association: $——.

Notes

1. Stock Receipt.—A receipt for stock for amount shown hereon, issued in the name of the Association in connection with this loan, is herewith enclosed to be held in its files, the stock itself being held by the Bank under the provisions of the Farm Loan Act as collateral security for the loan. A certificate of stock for a like amount must also be issued by the Association to the borrower and held in the files of the Association as collateral security for its endorsement of the borrower's note, a stock receipt therefor being given to the borrower.

2. Closed Loan Statement.—The Closed Loan Statement will be filled out by the Bank as far as it can when it forwards the check for closing the loan. The Secretary-Treasurer or Attorney must then enter the remaining data and have it executed by the applicant in triplicate and attested [fol. 25] by the Secretary-Treasurer. One copy must be retained by the Secretary-Treasurer for the records of the

Association, one delivered to the borrower and the other returned to the Bank immediately upon the closing of the loan. Carbon sheets may be used to facilitate making the copies.

3. Association Charges.—It is important that the Closed Loan Statement show not only correctly how much was collected from the borrower by the Association, but also accurately how it disposed of the same. The borrower is clearly entitled to this information. Before the Association can collect either the one (1) per cent of the amount approved or an extra fee to cover the cost of appraisal it must first obtain the consent of the Farm Loan Board thereto.

4. Preliminary Interest.—When the preliminary interest becomes due within thirty (30) days from the issuance of its check to close the loan the borrower consents that the Bank may deduct the amount thereof from the proceeds of the loan.

The undersigned borrower certifies that he has examined the above Closed Loan Statement and finds it correct, and he hereby accepts the amount shown hereon in full settlement and discharge of all obligations of the Federal Land Bank of Columbia to him in connection with this loan.

The — day of ——, 192-.

—— ——, Applicant.

Attest:

—— ——, Secretary-Treasurer.

———

[fol. 26] EXHIBIT "F" TO AGREED STATEMENT OF FACTS

Columbia, N. C., Oct. 19, 1931.

Mr. M. R. McCown, Attorney-at-law, Tryon, N. C.

In re Federal Land Bank Loan to Mrs. Will Gaines.
N 97 - 131

DEAR SIR: Complying with your request, the following is a statement of the facts in the above matter subsequent to the receipt of the check mentioned:

The Federal Land Bank of Columbia in the due course of handling the above mentioned loan forwarded its check

for $945.00 payable jointly to P. S. Lewis, Sec.-Treas., and Mrs. Will Gaines, borrower, which check was received by said P. S. Lewis.

Upon receipt of said check P. S. Lewis telephoned to Mrs. Will Gaines and told her that he had received the check, but that the proceeds of same had to be collected and it would be several days before he would have the proceeds for disbursement. He further stated that Mrs. Will Gaines' endorsement was required before the check could be forwarded for collection, and that he could be authorized over the telephone to make this endorsement and thus save her a trip to Columbus. P. S. Lewis further stated to Mrs. Gaines that the funds derived from said check would not be available for distribution until said funds were received in Columbus in the due course of collection, and that in the meantime the Federal Farm Loan Act directed the National Farm Loan Association to receive said funds, and retain the custody of the same until disbursed. Mrs. Gaines authorized the said P. S. Lewis to endorse the said check.

Having endorsed the name of said Mrs. Will Gaines to said check, and added his own endorsement, said P. S. Lewis deposited the said check in the Polk County Bank and Trust Company to the credit of Columbus National Farm Loan Association. The proceeds of said check were [fol. 27] in due course paid to said Polk County Bank and Trust Company by its correspondents, and almost simultaneously the Polk County Bank and Trust Company closed its doors.

The Polk County Bank and Trust Company was the duly designated depository of said Columbus National Farm Loan Association and P. S. Lewis, in addition to being Sec.-Treas. of said Columbus National Farm Loan Association, was also cashier of said bank.

Several months after the closing of said bank a proposition was submitted to its depositors whereby said bank could be reopened upon the depositors agreeing not to withdraw their funds on deposit for a period of two years. This proposition was submitted to the Columbus National Farm Loan Association as to the instant funds, and the directors of said Association by resolution duly offered and adopted, authorized said fund to remain on deposit in said bank for the two-year period. A sufficient number of depositors hav-

ing assented to said proposition, the Polk County Bank and Trust Company was re-opened, and has the said funds now on deposit to the credit of Columbus National Farm Loan Association. The proposition for said funds to remain on deposit in said bank for two years was not submitted to or assented to by said Mrs. Will Gaines.

No part of said funds except $54.23 for taxes have ever been disbursed by P. S. Lewis, Sec.-Treas. of said Columbus Nat. Farm Loan Association, and the closed loan form of said Federal Land Bank of Columbia (form 1328—6-16—25) has never been completely filled out or executed.

Yours very truly, (Signed) P. S. Lewis, Sec.-Treas.
Col. Nat. Farm Loan Ass'n.

The above case was submitted to and heard before His Honor, Michael Schenk, at the April Term of Polk County Superior Court, and the following judgment rendered:

[fol. 28] IN SUPERIOR COURT OF POLK COUNTY

JUDGMENT

This cause came on to be heard before the undersigned Judge, holding the 1932 Spring Term of the Superior Court of Polk County, upon an agreed statement of facts as same appears in the record.

The attorneys of record for the parties in the cause agreed to submit to the Court the issue in the following form:

Is the mortgage executed by Mrs. Will Gaines to the Federal Land Bank of Columbia valid?

The attorneys for the respective parties further agreed that the answer to the issue submitted to the Court involves only the question of consideration for the mortgage.

After presentation of the agreed statement of facts to the Court, and the attorneys of record being heard, it is the finding of the Court, based on the facts and the law, that the mortgage executed by Mrs. Will Gaines is not a valid mortgage and is not a lien against the property described therein, except to the extent of $54.23, which amount was advanced for taxes, and

It is ordered, adjudged, and decreed that said mortgage be cancelled upon the payment of a like amount ($54.23) by the defendant to the plaintiff.

This 27th day of April, 1932.

Michael Schenk, Judge Presiding.

IN SUPERIOR COURT OF POLK COUNTY

APPEAL ENTRIES

The plaintiff in open court gives notice of appeal to the Supreme Court of North Carolina, for errors assigned and to be assigned. Parties present further notice waived. Plaintiff is allowed sixty days in which to make up and serve statement of case on appeal, and defendant allowed sixty days thereafter to make up and serve counter-case or file exceptions. Appeal bond fixed at $50.00.

[fol. 29] IN SUPERIOR COURT OF POLK COUNTY

Assignments of Error

Plaintiff having heretofore duly objected and excepted to the judgment rendered by the Court in this cause, now assigns the following errors:

(1) For that the Court erred in holding that the mortgage as appears in the record, executed by Mrs. Will Gaines to the Federal Land Bank of Columbia, was invalid, on the ground that such holding was contrary to law and the agreed statement of facts.

IN SUPERIOR COURT OF POLK COUNTY

Agreement as to Case

It is agreed by the undersigned counsel for the respective parties, that the foregoing shall constitute the record and case on appeal to the Supreme Court of North Carolina, in the above entitled cause.

J. S. Massenburg, Harry D. Reed, Attorneys for Plaintiff. M. R. McCown, Attorney for Defendant.

(Record duly certified by Clerk of Superior Court.)

A true copy.

Edward Murray, Acting Supreme Court Clerk.
(Seal of the Supreme Court of the State of North Carolina.)

[fol. 30] IN SUPREME COURT OF NORTH CAROLINA

[Title omitted]

AGREEMENT AS TO EXHIBITS "A" & "B"

It is agreed by and between the undersigned counsel for the respective parties in above stated case that, because of the illegible condition of the exhibits appearing in the transcript of the record for the hearing of the case in the Supreme Court, on pages 5 to 11, inclusive, of the record, the attached abstract of the exhibits referred to shall be printed as an addendum to the transcript of the record, and shall be attached to the transcript of record for consideration of the Court, in place of or in addition to the exhibits as they appear on pages 5 to 11, inclusive, of the printed record.

This 24th day of August, 1932.

J. S. Massenburg, Harry D. Reed, Attorneys for the Federal Land Bank of Columbia. M. R. McCown, Attorney for Mrs. Will Gaines.

The essential portions of Exhibits A and B, which appear on pages 5 to 11, inclusive, of the printed record, are stated below, and it is agreed that this statement shall be printed and attached to the printed record as an addendum thereto:

[fol. 31] Exhibit A—Pages 5 to 9, Inclusive, of Record

This exhibit is Mrs. Gaines' application for a loan. It is dated August 16, 1930, is addressed to The Federal Land Bank of Columbia, and recites that the applicant, "pursuant to the provisions of the Federal Farm Loan Act," makes application through the Columbus National Farm Loan Association for a loan of One Thousand ($1,000.00) Dollars, to be secured by a first mortgage on the land described in the application, and that "Application to the As-

sociation for membership therein and subscription to its capital stock, pursuant to the provisions of the Act, are also hereby made."

$300 of the loan is desired to purchase cows to be used for dairying purposes, $650 to pay debts, and $50 to pay for stock in the National Farm Loan Association.

In the blanks provided in the application for listing all encumbrances, mortgages and liens against the land offered for security no entries are made. The application recites that the Bank is authorized to pay all existing liens out of proceeds of the loan applied for.

Attached to the application is a report of the Loan Committee of the Columbus National Farm Loan Association, reporting on the land offered as security and on the applicant, and recommending a loan in the amount of $1,000; and a certificate of the Secretary-Treasurer of the Association certifying that the Directors of the Association had approved and recommended to the Bank a loan not exceeding $1,000, and that the applicant had been admitted to membership in the Association.

On the back of the application are memoranda indicating the approval of the application by the Executive Committee [fol. 32] of The Federal Land Bank of Columbia, and in the memoranda, under the head of "Purpose of Loan," appear the following entries:

"$200	Andrews Store.
400	Farmers Fed.
200	R. Jackson.
75	W. Smith.
70	Dairy Equipment.
50	Ass'n Stk.
5	Fees.
$1,000	Total."

Attached to the application, and signed by Mrs. Gaines, is the following statement:

"In making application to the Federal Land Bank of Columbia, for a mortgage loan, I understand I am to subscribe for stock in the Columbus National Farm Loan Association of Columbus, N. C., to an amount equal to 5% of the face of the loan; that such stock may be paid for by a deduction from the proceeds of the loan when closed;

that such stock entitles its owner to participate in any dividends paid by said Association; that stockholders in said Association may be held individually responsible, equally and ratably, and not one for another, for all contracts, debts and engagements of such Association, to the extent of stock owned by them at the par value thereof, in addition to the amount paid and represented by their shares; that the estimated value of said stock at this time is less than par; and that upon payment of my loan my stock will be retired, but the association may retain the whole or any part of its par value on account of obligations of the Association existing at that time."

[fol. 33] Exhibit B—Pages 10 and 11 of Transcript

The note executed by Mrs. Gaines is dated November 5, 1930, and recites that she promises to pay to the Bank, or order, the principal sum of $1,000, with interest thereon at the rate of 6% per annum, payable annually in ten installments, each installment to include $100 on the principal, and 6% interest for one year on the entire unpaid balance of the principal of the note. The note recites that it is secured by a mortgage given by the maker to The Federal Land Bank of Columbia, and that the terms of the mortgage are made part of the note.

The note is endorsed by the Columbus National Farm Loan Association in the following words:

"The undersigned Association hereby endorses the within note and becomes liable for the payment of the indebtedness evidenced thereby in accordance with the terms thereof."

A true copy.
Edward Murray, Acting Supreme Court Clerk.
(Seal of the Supreme Court of the State of North Carolina.)

[fol. 34] IN SUPREME COURT OF NORTH CAROLINA, SPRING TERM, 1933

No. 552

Polk

FEDERAL LAND BANK OF COLUMBIA, S. C.,

v.

Mrs. WILL GAINES

Appeal by Plaintiff from Schenck, J., at April Term, 1932, of the Superior Court of Polk County. Affirmed

OPINION—Filed March 1, 1933

This is a controversy without action (C. S. 626), submitted to the Court, upon a statement of facts agreed, which are as follows:

1. The Federal Land Bank of Columbia is a Federal Land Bank chartered, organized and doing business under the provisions of an Act of the Congress of the United States known as The Federal Farm Loan Act.

2. The Columbus National Farm Loan Association is a National Farm Loan Association chartered, organized and doing business under the terms and provisions of The Federal Farm Loan Act.

3. On August 16, 1930, Mrs. Will Gaines made application through the Columbus National Farm Loan Association to The Federal Land Bank of Columbia for a loan of One Thousand ($1,000) Dollars, offering as security for the loan a mortgage on twenty-seven (27) acres of land in Polk County, North Carolina. The application was approved by the Columbus National Farm Loan Association on August 20, 1930, and on that date Mrs. Gaines was admitted to membership in said Association. The application was approved by The Federal Land Bank of Columbia on October 1, 1930. A copy of the application for the loan is attached to this statement of facts, made a part hereof, marked Exhibit A.

4. On October 2, 1930, Mrs. Gaines was advised by The Federal Land Bank of Columbia of the approval of her application for a loan, and was requested to select from a list of approved attorneys furnished her by the bank, attorneys to prepare an abstract of title for consideration of [fol. 35] the bank. Mrs. Gaines employed Messrs. Jones and Massenburg to prepare the abstract of title, and they furnished it to the bank on October 25, 1930.

5. On November 5, 1930, Mrs. Gaines executed and delivered to The Federal Land Bank of Columbia a note and mortgage for the loan in the amount of $1,000, copies of which are attached to this statement of facts, marked, respectively, Exhibits B and C, and made part hereof.

6. On November 14, 1930, The Federal Land Bank of Columbia sent to Messrs. Jones and Massenburg its check on the Commercial National Bank of Charlotte, North Carolina, dated November 12, 1930, for $945.00, payable jointly to Percy Lewis, a secretary-treasurer of the Columbia National Farm Loan Association, and Mrs. Will Gaines, with instructions to the attorneys and to the secretary-treasurer of the Columbus National Farm Loan Association for closing the loan to Mrs. Gaines. A copy of the check, with endorsements thereon, is attached to this statement, made a part hereof, marked Exhibit D. With the check was sent a closed loan statement, to be filled in by the secretary-treasurer of the Columbus National Farm Loan Association and signed by him and Mrs. Gaines. A copy of the statement as sent with the check is attached to this statement, made part hereof, and marked Exhibit E. The check represented the proceeds of the loan after deducting Fifty ($50) Dollars for Mrs. Gaines' stock in the Columbus National Farm Loan Association. Three ($3.50) Dollars and Fifty Cents for title determination fee, and One ($1.00) Dollar for title insurance premium.

7. The check referred to in the preceding paragraph was delivered by the attorneys to Percy Lewis, secretary-treasurer of Columbus National Farm Loan Association, on November 18, 1930, and was handled by him as indicated in a letter addressed by Mr. Lewis under date of October 19, 1931, to Mr. M. R. McCown, a copy of which is attached to this statement, marked Exhibit F, and made part hereof.

At the time of this transaction the Polk County Bank and Trust Company was the only bank in Columbus, North Carolina. The Polk County Bank and Trust Company was [fol. 36] open for business through Friday, November 21, 1930, but failed to open for business on Saturday, November 22, 1930.

8. No payments on the loan have been made by Mrs. Gaines to The Federal Land Bank of Columbia, although The Federal Land Bank of Columbia has demanded from Mrs. Gaines payment of the interest, which under the terms of the note executed by her was due December 1, 1930, and of the interest and the first installment of principal, which under the terms of the note were due December 1, 1931.

It appears from the letter referred to in paragraph 7 of the statement of facts agreed, that upon the receipt by him of the check payable to the order of Percy Lewis, Secretary-Treasurer of the Columbus National Farm Loan Association, and of Mrs. Will Gaines, the said Percy Lewis advised the defendant by telephone that he had received the check and that her endorsement was required before the check could be collected. The defendant thereupon authorized Percy Lewis to write her name on the back of the check, which he did. The check was then deposited in the Polk County Bank & Trust Company to the credit of the Columbus National Farm Loan Association. The check was paid by the bank on which it was drawn. No part of the proceeds of said check except the sum of $54.23 which was paid for taxes on the land conveyed by the mortgage, has been disbursed to or on the account of the defendant.

On the foregoing facts, the plaintiff contended that the note and mortgage executed by the defendant and now in the possession of the plaintiff, are valid, and that plaintiff is entitled to collect from the defendant the full amount of said note, according to its terms, and that upon default by the defendant in the payment of said note, the plaintiff has the right to foreclose the said mortgage; the defendant contended that neither the note nor the mortgage is valid, for the reason that she has received no consideration for the note.

The Court was of opinion that the note and mortgage are valid only for the sum of $54.23, the amount disbursed by the Columbus National Farm Loan Association in pay-

ment of taxes, and therefore ordered, adjudged and decreed [fol. 37] that the note and mortgage be cancelled upon the payment by the defendant to the plaintiff of the sum of $54.23.

From the judgment on the facts agreed, the plaintiff appealed to the Supreme Court.

J. S. Massenburg and Harry D. Reed for plaintiff.
M. R. McCown for defendant.

CONNOR, J.:

The transactions between the plaintiff and the defendant as disclosed by the statement of facts agreed appearing in the record were conducted in strict accord with the provisions of the Act of Congress known as the Federal Farm Loan Act. In accordance with these provisions, the defendant, who had applied for and accepted membership in the Columbus National Farm Loan Association, applied through said Association to the plaintiff for a loan of one thousand dollars, offering as security for said loan her note for one thousand dollars, secured by a mortgage on twenty-seven acres of land in Polk County, North Carolina. This application was endorsed by the Association, and approved by the plaintiff. Upon the delivery to it of the note and mortgage duly executed by the defendant, the plaintiff transmitted to the Columbus National Farm Loan Association funds to be disbursed by said Association to the defendant on account of the loan.

The said Association has disbursed only the sum of $54.23 of said funds. The balance of said funds are on deposit in the Polk County Bank & Trust Company, and are not available for closing the loan. The defendant has received no consideration for her note and mortgage, except the sum of $54.23, unless it shall be held that the Columbus National Farm Loan Association received the funds from the plaintiff as the agent of the defendant.

As we construe the provisions of the Federal Farm Loan Act, the Columbus National Farm Loan Association was not the agent of the defendant in the transactions disclosed by the statement of facts agreed. The Federal Farm Loan Act provides for the organization of National Farm Loan Associations as intermediaries between borrowers and Federal Land Banks. All applications for loans from a Fed-

eral Land Bank must be made through a National Farm [fol. 38] Loan Association. No loan can be made by a Federal Land Bank directly to the borrower. When the application for a loan has been received by a Federal Land Bank, through a National Farm Loan Association, and approved, the Act requires that funds to close the loan shall be transmitted by the Land Bank to the Association, for disbursement to the borrower.

Under the provisions of the Act, the National Farm Loan Association is a public agent, designated by the Act as the intermediary between the Bank and the borrower. It was so held in Fed. Land Bank vs. Shingler, 174 Ga. 352, 162 S. E. 815, and in Bjorkstam vs. Fed. Land Bank, 138 Wash. 456, 244 Pac. 981.

There is no error in the judgment in this case. It is affirmed.

A true copy.

Edward Murray, Acting Supreme Court Clerk.
(Seal of the Supreme Court of the State of North Carolina.)

[fol. 39] IN SUPREME COURT OF NORTH CAROLINA, SPRING TERM, 1933

No. 552

FEDERAL LAND BANK OF COLUMBIA, S. C.,

vs.

MRS. WILL GAINES

Polk County

JUDGMENT

This cause came on to be argued upon the transcript of the record from the Superior Court of Polk County, upon consideration whereof this Court is of opinion that there is no error in the record and proceedings of said Superior Court.

It is, therefore, considered and adjudged by the Court here that the opinion of the Court, as delivered by the Honorable Geo. W. Connor, Justice, be certified to the said

Superior Court, to the intent that the judgment is affirmed; and it is considered and adjudged further that the plaintiff, Bank of Columbia, S. C., do pay the costs of the appeal in this Court incurred, to-wit, the sum of sixteen 15/100 dollars ($16.15), and execution issue therefor.

A true copy.

Edward Murray, Acting Clerk of the Supreme Court.

(Seal of the Supreme Court of the State of North Carolina.)

[fol. 40] IN SUPREME COURT OF NORTH CAROLINA

[Title omitted]

PETITION FOR STAY OF EXECUTION

To the Honorable the Chief Justice of the Supreme Court of North Carolina:

Now comes The Federal Land Bank of Columbia, appellant in the above stated cause, by its attorneys therein, and respectfully represents to the Court:

1. That, in view of the affirmance of the judgment rendered in the above stated cause by the decision of the Supreme Court of North Carolina, filed therein on March 1, 1939, the appellant will within the time allowed by law duly petition the Supreme Court of the United States for a writ of certiorari to the Supreme Court of North Carolina to require the Supreme Court of North Carolina to certify and forward the record in the above stated cause to the Supreme Court of the United States for its review and de-
[fol. 41] termination thereof.

2. That appellant desires the issuance of an order staying the execution and enforcement of the judgment, and certification by the Clerk of the Supreme Court of North Carolina to the Superior Court of Polk County, North Carolina, of the decision of the Supreme Court of North Carolina in the above stated cause, pending the application by the appellant for the writ of certiorari and the disposition thereof by the Supreme Court of the United States.

3. That appellant, in accordance with the provisions of Section 350, Chapter 9, Title 28, U. S. C. A., offers herewith

its bond with good and sufficient corporate surety, containing the conditions prescribed by said Section 350.

Wherefore the appellant prays for an order approving and accepting the bond offered herewith and staying the enforcement and execution of the judgment in the above stated cause and the certification of the decision of the Supreme Court of North Carolina therein by the Clerk of said Court to the Superior Court of Polk County, North Carolina.

Dated this the 13th day of March, 1933.

I. M. Bailey, Raleigh, North Carolina; J. S. Massenburg, Tryon, North Carolina; Harry D. Reed, Columbia, South Carolina, Attorneys for the Appellant, The Federal Land Bank of Columbia.

[fol. 42] IN SUPREME COURT OF NORTH CAROLINA

[Title omitted]

ORDER STAYING EXECUTION

The petition of The Federal Land Bank of Columbia, appellant in the above stated cause, for an order staying the execution and enforcement of the judgment, and certification of the decision, of the Supreme Court of North Carolina in the above stated cause for the purpose of enabling The Federal Land Bank of Columbia within the time allotted by law to apply for and to obtain a writ of certiorari from the Supreme Court of the United States in the above entitled cause, and the bond submitted with the petition, have been considered, and it is hereby ordered that the bond of The Federal Land Bank of Columbia, as principal, and National Surety Company, as surety, is hereby approved, and that the execution and enforcement of the judgment, and certification by the Clerk of this Court to the Superior Court of Polk County, North Carolina, of the decision, of the Supreme Court of North Carolina in the above entitled cause be and the same are hereby [fol. 43] stayed for the period allotted by law for the application by The Federal Land Bank of Columbia to the Supreme Court of the United States for a writ of cer-

tiorari in the above entitled cause, and until the cause is finally disposed of by the Supreme Court of the United States in the event of the due filing of said application by The Federal Land Bank of Columbia—all of which is in accordance with the provision of Section 350, Chapter 9, Title 28, U. S. C. A.

Dated at Raleigh, North Carolina, this the 13th day of March, 1933.

W. P. Stacy, Chief Justice of the Supreme Court of North Carolina.

Attest:

Edward Murray, Clerk of the Supreme Court of North Carolina. (Seal.)

[fols. 44-46] Stay bond on petition for certiorari for $1,000 omitted in printing.

[fol. 47] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 48] IN SUPREME COURT OF NORTH CAROLINA, EIGHTEENTH CIRCUIT, FALL TERM, 1932

No. 552

FEDERAL LAND BANK OF COLUMBIA, Plaintiff,

vs.

Mrs. WILL GAINES, Defendant

CERTIFICATE AS TO JUDGMENT, ETC.

I, Edward Murray, Acting Clerk of the Supreme Court of North Carolina, do hereby certify that final judgment was rendered and entered by said Court in above entitled cause on March 1, 1933; that said judgment was adverse to the plaintiff (appellant) in said cause, and sustained the judgment of the Superior Court therein; that a copy of said judgment is included in the transcript of the record

in said cause furnished to attorneys for plaintiff for filing in the Supreme Court of the United States; that said judgment was a final disposition of said cause in the Supreme Court of North Carolina; that no motion for a rehearing of said cause was filed in this Court, and that the time for filing a motion for rehearing has expired.

Witness my official signature as Acting Clerk of the Supreme Court of North Carolina, and the seal of said Court, this 15th day of May, 1933.

Edward Murray, Acting Clerk Supreme Court of North Carolina. (Seal of the Supreme Court of the State of North Carolina.)

[fol. 49] IN SUPREME COURT OF THE UNITED STATES

STIPULATION RE OMISSION OF EXHIBITS

It is hereby stipulated by and between the respective parties hereto, through the undersigned, their attorneys, that because of the illegible condition of Exhibits A, B and D, as they appear on pages 5 to 11, inclusive, and page 21, of the certified transcript of the proceedings in the Supreme Court of North Carolina, filed in the Supreme Court of the United States, said exhibits shall be omitted by the Clerk of this Court in printing the record for consideration by this Court.

May 15, 1933.

I. M. Bailey, Post Office Address Raleigh, North Carolina; J. S. Massenburg, Post Office Address Tryon, North Carolina; Harry D. Reed, Post Office Address Columbia, South Carolina, Attorneys for Petitioner. M. R. McCown, Post Office Address Tryon, North Carolina, Attorney for Respondent.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 9, 1933

The petition herein for a writ of certiorari to the Supreme Court of the State of North Carolina is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4054)